IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1832 OF 2005

Smt.Manjula Kashinath Mogal & Anr. ... Petitioners

V/s.

Shri Rajendra Chintaman Vani & Ors. ... Respondents

Mr.V.A. Gangal for Petitioners
Mr.M.M. Sathe for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 24, 2005**

P.C.:

. The Petition challenges the order of the Revisional Court allowing the respondents to file their written statement. Exception is taken to the fact that the revisional court has set aside the trial Court's decision refusing permission to the respondents to file a written statement beyond the period of limitation as stipulated under Order 8 rule 1 of the Code of Civil Procedure.

2. Undisputedly, the Respondents were served by substituted service on 23.4.2004. An application was preferred by them for permission to file written statement on 21.6.2004. An order disallowing his application has been passed since no reasons had been stated in the application for not filing the written

statement within the period of limitation. A fresh application was then filed on 21.7.2004 seeking permission to file the written statement. This application was also rejected. Aggrieved by this decision, a revision application was filed by the respondents. The Revisional Court has considered the matter and has found that the application deserved to be granted. The order of the trial Court has been set aside. The written statement has thus been accepted on record. The petitioner has impugned the order of the Revisional Court by filing the present petition.

3. It is submitted on behalf of the Petitioner that no sufficient cause has been made out by the Respondent for filing the written statement beyond the 90-day period and further, the trial Court having rejected the application, the revisional Court should not have interfered with it. A submission is made that the Court may permit the filing of written statement beyond the period of 90 days only in exceptional circumstances, which were absent in the present case.

4. In the Division Bench judgment of this Court in the case of *Chintaman Sukhdeo Kaklij & Ors. v/s. Shivaji Bhausaheb Gadhe & Ors.*, **2004 (4) Mh.L.J.739**, the Division Bench of this Court has considered the

provisions of Order 8 Rule 1 of the Code and has held that an harmonious reading of order 8 Rules 1, 5, 9 and 10 of the Code as amended by Act 22 of 2002 would indicate that the Court has discretion to permit the defendant to file the written statement beyond the stipulated period of 90 days provided exceptional and special circumstances exist. In the present case, there is no dispute that the summonses were served on the respondents on 23.4.2004 and the suit was fixed on 27.4.2004 for filing written statement. The respondents did not appear on this date before the Court. An application was made by them for an adjournment in order to file their written statement. This application was rejected. Thereafter an application was filed by them on 21.7.2004 alongwith the copy of their written statement seeking extension of the time to file a written statement and for permission to take it on record. The 30 days as stipulated under Order 8 Rule 1 expired on 22.5.2004 when the Court had its vacation. The matter had been adjourned to 24.6.2004 when the respondents were present & sought an adjournment to file their written statement. However, the adjournment was refused. The second application preferred on 21.7.2004 was made within 90 days of being served with the summonses.

5. In my view, the Revisional Court has committed no error in permitting the filing of the written statement. The respondents have made out exceptional circumstances and, therefore, the permission granted is appropriate. It would not have been possible for the Respondents to file the written statement either on 27.4.2004, within four days of the summonses being served or within 30 days of service since the Court was on vacation. The first opportunity therefore, which was available to the respondents to file the written statement was 24.6.2004 on which date an adjournment was sought. The written statement was sought to be then filed on 21.7.2004 within the 90-day period. In my view, since exceptional circumstances have been made out, I see no reason to interfere with the impugned order. Petition is rejected.